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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**
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21 CITY AND COUNTY OF SAN FRANCISCO,
et al.,

22 Plaintiffs,

23 v.

24 PURDUE PHARMA L.P., et al.

25 Defendants.
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Civil Case No.: 3:18-CV-07591-CRB

NON-STAYED DEFENDANTS'
MOTION TO STAY

Honorable Charles R. Breyer

Hearing Date: TBD

1 On August 9, Plaintiff, along with Defendants AmerisourceBergen, Cardinal, McKesson,
2 Johnson & Johnson and its subsidiary Janssen Pharmaceuticals Inc. f/k/a Ortho-McNeil-Janssen
3 Pharmaceuticals, Inc. and Janssen Pharmaceutica, Inc., as well as its former affiliate Noramco, Inc.
4 (collectively “Stayed Defendants”) filed their fourth settlement update (“Settlement Update”). *See* Doc.
5 616. The Settlement Update informed the Court that the MDL Plaintiffs’ Executive Committee, several
6 State Attorneys General, and the Stayed Defendants recently “announced agreement on terms of
7 proposed nationwide settlements to resolve the opioid-related claims of states and their political
8 subdivisions.” *Id.* at 1. At the same time, however, the Settlement Update made clear that those
9 agreements remain “proposed settlements,” which, if ever, may not be implemented until April 2022,
10 and must satisfy several conditions before they can become final. *See id.* at 2, 3. The settlements are
11 contingent on the discretionary decisions of each state, political subdivision, and the Stayed Defendants.
12 *See id.* at 2, 3. In fact, the Settlement Update and the proposed settlements themselves make clear that
13 these agreements may never be implemented, but that will not be known until the February 1, 2022,
14 “reference date”—after the close of fact and expert discovery under the current schedule. *Id.* at 3.

15 Under these circumstances, the undersigned Non-Stayed Defendants¹ seek a stay of all discovery
16 and all case deadlines until such time as either (1) the proposed nationwide settlements are implemented,
17 or (2) the proposed settlements both fail to reach critical mass and the current partial stay is lifted,
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22 ¹The undersigned Non-Stayed Defendants include Allergan plc; Allergan Finance, LLC; Allergan Sales,
23 LLC; Allergan USA, Inc.; Ando, Inc.; Endo Pharmaceuticals Inc.; Endo Health Solutions Inc.; Par
24 Pharmaceutical, Inc.; Par Pharmaceutical Companies, Inc.; Cephalon, Inc.; Teva Pharmaceuticals, USA,
25 Inc.; Teva Pharmaceutical Industries, Ltd.; Watson Laboratories, Inc.; Actavis LLC; Actavis Pharma,
26 Inc., f/k/a Watson Pharma, Inc.; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Warner Chilcott
27 Company, LLC; Actavis South Atlantic LLC; Actavis Totowa LLC; Actavis Kadian LLC; Actavis
28 Laboratories UT, Inc., f/k/a Watson Laboratories, Inc.-Salt Lake City; Actavis Laboratories FL, Inc.,
f/k/a Watson Laboratories, Inc.-Florida; and Walgreen Co. Defendant Allergan plc was formerly known
as Actavis plc and is currently known as Allergan Limited. In filing this motion to stay, it does not
waive but rather expressly reserves its objection to the Court’s personal jurisdiction over it. Defendant
Allergan Finance, LLC was formerly known as Actavis, Inc., which was formerly known as Watson
Pharmaceuticals, Inc.

1 whichever comes first. To proceed otherwise risks duplicative discovery, duplicative trials, and
2 inconsistent verdicts.²

3 ARGUMENT

4 I. The proposed nationwide settlements may never be implemented.

5 As explained in the Settlement Update, the proposed nationwide settlements include a process
6 for states and political subdivisions to decide whether to participate. There are multiple points in that
7 process where the settlements may fail and litigation would continue. *See* Doc. 616 at 2, 3. Within the
8 first 30 days, each state must decide for itself whether to participate. The Stayed Defendants then decide
9 whether the number of assenting states constitutes a “critical mass.” If not, the “deal fails and litigation
10 continues.” *Id.* at 2. Even if enough states join the proposed settlements in that 30-day period, litigating
11 political subdivisions must then decide whether to join in a subsequent 120-day period, and again the
12 Stayed Defendants then decide whether the number of such subdivisions constitutes a “critical mass.” If
13 not, again, the “deal fails and litigation continues.” *Id.* Further, there are two separate agreements, one
14 with distributor Stayed Defendants, and one with manufacturer Stayed Defendants. If either one of
15 those agreements fails at any point in the process with respect to any Stayed Defendant, litigation
16 continues as to that Stayed Defendant.

17 Political subdivisions around the country have voiced skepticism about whether the settlements
18 will be finalized, and, in some cases, have outright opposed them. For example, counsel for the City of
19 Boston explained to a Massachusetts state court in early August, “We are quite a length of time away
20 from knowing whether that settlement is final, despite the way it’s been reported in the press. ***It’s more***
21 ***along the lines of a proposed settlement***, each state has to decide whether or not it’s going to accept or
22 decline.” Ex. A, 8/2/21 Hr’g Tr. at 65:18-22 (emphasis added); Ex. B, Tinkham Decl. [stating that the
23 “unidentified attorney” in the hearing transcript was Vincent Greene, counsel for the City of Boston].
24 Boston’s counsel works at Motley Rice, a prominent firm on the MDL Plaintiffs’ Executive Committee
25 that negotiated the proposed settlements. *See id.* Moreover, district attorneys in Philadelphia and
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27 ² Counsel for the parties met and conferred about the Non-Stayed Defendants’ Motion to Stay on August
28 20. Plaintiff represented that it would likely oppose the Non-Stayed Defendants’ request for relief.

1 Allegheny County, home to Pittsburgh, oppose the settlements so strongly that they have filed suit
2 against the Pennsylvania attorney general, arguing that he cannot relinquish their claims. Ex. C, *A*
3 *second Pa. district attorney sues AG Shapiro’s office over opioid settlement*, Aubrey Whelan and
4 Catherine Dunn, Philadelphia Inquirer, Aug. 2, 2021.

5 Even if they manage to clear all of these hurdles, the proposed agreements are not expected to be
6 final until April 2, 2022. See Doc. 616 at 3 (noting April 2, 2022 effective date). In the meantime, if
7 either deal fails at any one of the aforementioned points in the implementation process, *id.* at 2, 3,
8 “Plaintiffs will request a lift in the stay of Stipulating Defendants in the instant suit.” *Id.* at 3. Given
9 this uncertainty, and the broader impact on this case should the settlements fall through, a short stay of
10 all discovery and case deadlines—until the settlements either are finalized or fail—is appropriate.

11 **II. A stay for the settlement implementation period will promote efficiency.**

12 Plaintiff seeks to hold all Defendants liable for causing a “public nuisance” and to recover “costs
13 that will be associated with future efforts to abate the public nuisance in San Francisco.” See Doc. 128
14 (First Am. Compl. ¶¶ 886-906). Although the Non-Stayed Defendants strongly dispute liability,
15 Plaintiff seeks to hold them liable for billions of dollars of alleged abatement costs—the same costs for
16 which they would seek to hold the Stayed Defendants liable should the settlements fall through.

17 In light of the uncertainty surrounding the proposed settlements, continuing discovery of these
18 claims during the settlement implementation period between now and April 2022 increases the
19 likelihood of duplicative discovery, duplicative trials, and inconsistent verdicts. Indeed, Plaintiff and the
20 Stayed Defendants already have stated that if the proposed settlements fail, the Court will need “to set
21 discovery and trial dates that are separate and apart from the current schedule such that Plaintiff’s claims
22 against the [currently stayed] Defendants would be tried separately from the claims against the [non-
23 stayed] defendants.” Doc. 435 at 2 (Stipulation and [Proposed] Order to Stay and Sever Proceedings
24 Against Certain Defendants). That would be incredibly inefficient.

25 The cases against the Stayed Defendants and the Non-Stayed Defendants are similar, involving
26 overlapping facts and issues. If the settlements fail, the Stayed Defendants will have the right to conduct
27 their own discovery regarding witnesses, documents, and facts. That additional discovery will cover
28 much of the same territory as the discovery conducted by the Non-Stayed Defendants, just several

1 months later. Such additional discovery would almost certainly require duplication of effort by the
2 Court to resolve additional discovery disputes—disputes that could be coordinated and handled once if
3 the case were stayed in the interim. The additional discovery also likely would impact the cases against
4 the Non-Stayed Defendants and require their participation.³ In addition, if multiple trials are necessary,
5 the Court will have to select multiple juries, which would be tasked with considering overlapping facts
6 and issues, creating the possibility of inconsistent verdicts, not to mention a waste of judicial and party
7 resources. The opioid trials that have proceeded thus far have gone on for months. The prospect of one
8 court holding more than one such trial to multiple juries facing many of the same facts and issues is both
9 undesirable and completely unnecessary.

10 Now is the time to stay remaining discovery to avoid these possibilities. Depositions of
11 Plaintiff's witnesses have only just begun (only two Plaintiff's witnesses have testified so far), and
12 expert discovery is still months away. A stay of the entire case until the proposed settlements are
13 finalized in April 2022, or until the settlements fail in the interim, would not prejudice Plaintiff. To the
14 contrary, if the settlements are not implemented, the stay can be lifted—as Plaintiff already has stated it
15 will seek to have done in that circumstance, Doc. 616 at 3—and the claims against all Defendants can
16 proceed together in one action. In the meantime, prudence requires a stay of the entire case, to prevent
17 having to litigate the case twice.

18 CONCLUSION

19 For these reasons, the undersigned Non-Stayed Defendants respectfully request that the Court
20 stay the entire case until the proposed nationwide settlements are either finalized or they fail.
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25 ³ Plaintiff and the Stayed Defendants raised a similar (albeit lesser) concern regarding duplicative
26 discovery in seeking their own stay in January 2021. They noted that “enormous amounts of additional
27 time and resources would be required from the Court and the Parties to continue litigating the claims
28 against the Severing Defendants and meet the upcoming deadlines while the Parties are simultaneously
working to memorialize their settlement agreement.” Doc. 435 at 2. On the current course, the Non-
Stayed Defendants—and the Court—will necessarily expend significant time and resources. The point
here is to avoid the possibility of having to do that twice.

1 DATED: August 20, 2021

Respectfully submitted,

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1 **ATTESTATION**

2 Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has
3 been obtained from the above signatories.

4
5 Dated: August 20, 2021

By: /s/ Katherine M. Swift
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